



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

K&L Gates LLP
3580 Carmel Mountain Road
Suite 200
San Diego CA 92130

COPY MAILED

NOV 18 2009

OFFICE OF PETITIONS

In re Application of :
Vega et al. :
Application No. 10/022,249 : LETTER REGARDING
Filed: December 17, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. 3800073.00002 :
/ 911 :

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT AT ALLOWANCE PURSUANT TO COMMENT 43 OF THE FINAL RULE" filed September 24, 2009. Pursuant to their duty of good faith and candor to the Office, applicants disclose that the patent term adjustment of 76 days included in the Notice of Allowance and Determination of Patent Term Adjustment mailed August 13, 2009 may be longer than appropriate.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero **(0)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On August 13, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 76 days. Applicants disclose that a period of reduction should have been entered for the supplemental information disclosure statement filed March 2, 2007 as it was filed after the response filed November 22, 2006 and did not contain a § 1.704(d) statement.

A review of the record confirms that a period of reduction should have been entered for the filing of the supplemental IDS on March 2, 2007.

37 CFR 1.704 (c) provides that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

In this instance, applicants filed a response to a non-final rejection on November 22, 2006. Thereafter, on March 2, 2007, applicants filed the supplemental IDS. As acknowledged by applicants, the supplemental IDS did not include the proper §1.704(d) statement. Further, the IDS was not expressly requested by the examiner. Accordingly, pursuant to § 1.704(c)(8), an additional period of reduction of 100 days is being entered for the period beginning on November 23, 2006, the day after the initial reply was filed and ending on March 2, 2007, the date of filing of the IDS.

With respect to applicants' other comments, applicants should note that the Office took action within the meaning of 37 CFR 1.702(a)(2) on May 9, 2007. The fact that the Office mailed another Office action on August 30, 2007, in response to the petition to withdraw the finality of the May 9, 2007, which only withdrew the finality, does not negate the fact that the Office first mailed an action under 35 U.S.C. §132 in response on May 9, 2007. Accordingly, Office delay in taking action in response to the reply filed November 22, 2006 was properly calculated based on the mailing of an Office action on May 9, 2007. Entry of an additional period of adjustment for Office delay is not warranted.

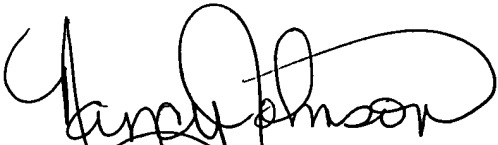
In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the notice of allowance is zero (0) days.

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of revised PALM Screen

Day : Friday
Date: 11/6/2009

PALM INTRANET

Time: 13:29:28

PTA Calculations for Application: 10/022249

Application Filing Date:	12/17/2001	PTO Delay (PTO):	426
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	350
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-100		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
138	11/06/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		100	
128	08/13/2009	MAIL NOTICE OF ALLOWANCE			
127	08/03/2009	ISSUE REVISION COMPLETED			
126	08/03/2009	DOCUMENT VERIFICATION			
125	08/03/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
124	08/03/2009	NOTICE OF ALLOWABILITY			
119	04/16/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
118	05/20/2009	DATE FORWARDED TO EXAMINER			
117	04/20/2009	RESPONSE AFTER NON-FINAL ACTION		94	114
116	04/20/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
115	04/16/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
114	10/16/2008	MAIL NON-FINAL REJECTION			
113	10/14/2008	NON-FINAL REJECTION			
112	07/10/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
111	07/10/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
110	07/28/2008	DATE FORWARDED TO EXAMINER			
109	07/07/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
108	07/28/2008	DATE FORWARDED TO EXAMINER			
107	07/07/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
106	07/28/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS			

		ABANDONMENT IF CPA)			
105	07/10/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
104	07/07/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
103	05/23/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
102	05/20/2008	CORRESPONDENCE ADDRESS CHANGE			
101	05/13/2008	MAIL FINAL REJECTION (PTOL - 326)			
100	05/12/2008	FINAL REJECTION			
99	02/07/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
95	03/07/2008	DATE FORWARDED TO EXAMINER			
94	02/07/2008	RESPONSE AFTER NON-FINAL ACTION		69	87
93	02/07/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
92	02/07/2008	REFERENCE CAPTURE ON IDS			
91	02/07/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
90	02/07/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
88	08/30/2007	MAIL NOTICE OF WITHDRAWN ACTION			
87	08/30/2007	MAIL NON-FINAL REJECTION			
86	08/29/2007	NON-FINAL REJECTION			
85	08/29/2007	LETTER WITHDRAWING / VACATING OFFICE ACTION			
84	07/26/2007	MAIL-PETITION DECISION - GRANTED			
83	02/05/2007	PETITION ENTERED			
82	07/26/2007	MAIL-PETITION DECISION - GRANTED			
81	05/25/2007	PETITION ENTERED			
80	05/09/2007	MAIL FINAL REJECTION (PTOL - 326)	48		75
79	05/07/2007	FINAL REJECTION			
78	03/02/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
77.7	03/02/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
77	03/02/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
76	03/05/2007	DATE FORWARDED TO EXAMINER			
75	11/22/2006	RESPONSE AFTER NON-FINAL ACTION			
74	01/30/2007	CHANGE IN POWER OF ATTORNEY (MAY			

		INCLUDE ASSOCIATE POA)			
73	09/07/2006	MAIL NON-FINAL REJECTION			
72	09/05/2006	NON-FINAL REJECTION			
71	11/13/2002	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
70	06/22/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
69.7	06/22/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
69	06/22/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
68	06/30/2006	DATE FORWARDED TO EXAMINER			
67	06/22/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
66	06/30/2006	DATE FORWARDED TO EXAMINER			
65	06/22/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
64	06/30/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
62	06/22/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
61	11/13/2002	REFERENCE CAPTURE ON IDS			
60.7	11/13/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
60	11/13/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	09/03/2002	CORRECTED FILING RECEIPT			
58	04/17/2006	MAIL FINAL REJECTION (PTOL - 326)			
57	04/14/2006	FINAL REJECTION			
56	03/30/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
55	02/14/2006	DATE FORWARDED TO EXAMINER			
54	02/01/2006	RESPONSE AFTER NON-FINAL ACTION			
53	12/23/2005	MAIL NON-FINAL REJECTION			
52	12/20/2005	NON-FINAL REJECTION			
51	11/02/2005	CASE DOCKETED TO EXAMINER IN GAU			
50	10/12/2005	DATE FORWARDED TO EXAMINER			
49	09/01/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
48	10/12/2005	DATE FORWARDED TO EXAMINER			
47	09/01/2005	REQUEST FOR CONTINUED EXAMINATION			

		(RCE)			
46	10/12/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
45	09/01/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
44	08/23/2005	MAIL ADVISORY ACTION (PTOL - 303)			
43	08/08/2005	ADVISORY ACTION (PTOL-303)			
42.7	06/05/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
42	06/05/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
41	07/24/2005	CASE DOCKETED TO EXAMINER IN GAU			
40	07/24/2005	CASE DOCKETED TO EXAMINER IN GAU			
39	07/20/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
38	07/20/2005	DATE FORWARDED TO EXAMINER			
37	07/13/2005	AMENDMENT AFTER FINAL REJECTION			
36	09/10/2002	POWER TO MAKE COPIES AND/OR INSPECT			
34	03/07/2002	PRELIMINARY AMENDMENT			
33	06/15/2005	MAIL FINAL REJECTION (PTOL - 326)			
32	06/13/2005	FINAL REJECTION			
31	03/31/2005	DATE FORWARDED TO EXAMINER			
30	03/14/2005	RESPONSE AFTER NON-FINAL ACTION		55	24
29	03/14/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
28	03/15/2005	REFERENCE CAPTURE ON IDS			
27.7	03/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		1	30
27	03/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	11/03/2004	REFERENCE CAPTURE ON IDS			
25.7	11/03/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	11/03/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	10/18/2004	MAIL NON-FINAL REJECTION			
23	10/14/2004	NON-FINAL REJECTION			
22	08/13/2004	DATE FORWARDED TO EXAMINER			
21	07/30/2004	RESPONSE TO ELECTION / RESTRICTION FILED		59	17
20	07/30/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			

19	07/30/2004	WORKFLOW INCOMING AMENDMENT IFW			
18	06/24/2004	CORRESPONDENCE ADDRESS CHANGE			
17	03/01/2004	MAIL RESTRICTION REQUIREMENT	378		-1
16	03/01/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
15	12/15/2003	MISCELLANEOUS INCOMING LETTER			
14	09/09/2002	CORRESPONDENCE ADDRESS CHANGE			
13	08/08/2002	CASE DOCKETED TO EXAMINER IN GAU			
12	08/05/2002	APPLICATION DISPATCHED FROM OIPE			
11	08/05/2002	APPLICATION IS NOW COMPLETE			
10	07/22/2002	ADDITIONAL APPLICATION FILING FEES		72	7
9	07/22/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	07/22/2002	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
7	02/11/2002	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
5	02/06/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
4	01/12/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	01/07/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	12/17/2001	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	12/17/2001	INITIAL EXAM TEAM NN			

Search Another: Application#

Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | [Home page](#)